Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36
	)	

COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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SUMMARY

The categorization of IP-enabled services should be based upon whether such services interconnect with the PSTN. No service that connects to the PSTN should be granted below-cost or free access to a rural ILEC's network. The Commission is correct to assert that "the cost of the PSTN should be borne equitably among those that use it in similar ways." Because the use of IP technology does not reduce an ILEC's cost of providing access to its network, IP-enabled services that utilize an ILEC's network should provide equitable compensation through duly approved access charges. This requirement should remain in place until the current intercarrier compensation regime is reformed in a manner that accounts for the unique circumstances of rural ILECs. IP-enabled service providers should not be permitted to shift the costs they impose on rural local networks onto rural ILECs and their customers. If this were to occur, the very networks that carry IP-enabled services to rural consumers would be compromised.

IP-enabled services that are functionally equivalent to traditional telephony should also be subject to similar service obligations. Consumers should not be denied features such as full E911 functionality and access for the disabled which they have come to expect from all providers of telephone service. Moreover, competitive disparities and arbitrage opportunities will result if one set of carriers are held to public safety and disability access standards, while other providers offering functionally equivalent services over a different technological platform are not.

Rural ILECs need to retain the option to include DSL-based services in revenue pools, regardless of how these services are statutorily classified. Without pooling, many rural ILECs would be forced to significantly raise their rates for DSL-based services in

order to recover their costs. This may cause many current DSL subscribers to cancel the service. In addition, without pooling, rural ILECs would find it far more difficult to expand their DSL-based services to customers living in the most remote areas.

The Commission should use its permissive authority to expand the base of universal service fund contributors to include all facilities-based broadband Internet access providers. As a rapidly growing amount of voice traffic migrates to IP platforms – which are transported, in part, via broadband services that do not presently contribute to the USF – the long-term sufficiency of the Fund is jeopardized. Therefore, the inclusion of all facilities-based broadband Internet access providers as contributors has become increasingly critical to maintaining a stable and sufficient USF, as Congress intended. In addition, current rules require only DSL providers to contribute to the Fund, while cable modem and other broadband platforms are exempt. Thus, requiring all facilities-based broadband providers over all platforms to contribute would restore competitive neutrality in the rules and eliminate the potential for marketplace distortions.

Finally, if the Commission asserts federal jurisdiction over IP-enabled services, it must account for different approaches states have taken regarding rate rebalancing. The variety of rate rebalancing efforts has led to a diverse mix of end-user and intrastate access rates among states. Therefore, federal assertion of jurisdiction over IP-enabled services must include assurances that the result will be revenue-neutral for all rural ILECs in all states, without prejudice to a state's rebalancing efforts. Rural ILECs need reasonable assurances that they will be permitted to recover the costs of their networks before they will invest in new infrastructure. No rural ILEC should be denied full recovery of its costs on account of a state commission's end-user and intrastate access

rate policies. Moreover, the Commission must carefully analyze the potential impact that federal jurisdiction over IP-enabled services would have on end-user rates and ensure that a sufficient support mechanism is in place that would fulfill Congress' universal service objectives.

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I. INTRODUCTION

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the Federal Communications Commission's (Commission or FCC) Notice of Proposed Rulemaking[1] on Internet Protocol (IP)-enabled services. OPASTCO is a national trade association representing approximately 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition to serving as ILECs, OPASTCO members provide a wide range of other communications services, including dial-up Internet access, broadband, wireless, competitive local exchange, long distance and video.

OPASTCO members are among the industry leaders in bringing new, innovative

[1] *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10,

services to consumers in high-cost rural areas. The customers of rural ILECs have been among the first to enjoy advances such as digital switching, broadband access, and video over digital subscriber line (DSL). OPASTCO stresses that rural consumers will not be able to enjoy the benefits of IP-enabled applications, including Voice over Internet Protocol (VoIP), if the underlying local networks operated by rural ILECs that carry these applications are compromised.

Therefore, the costs of the public switched telephone network (PSTN) in rural service areas must be paid for equitably by all service providers that utilize it. Failure to ensure *adequate* compensation for the use of the high-cost networks that rural ILECs build, maintain and upgrade will ultimately result in the degradation of the very infrastructure needed to bring IP-enabled services to rural consumers. This result contradicts the goals of the Telecommunications Act of 1996 (1996 Act, the Act) and must therefore be avoided.

II. THE CATEGORIZATION OF IP-ENABLED SERVICES AND THE RESULTING OBLIGATIONS APPLIED TO THEM SHOULD BE BASED ON INTERCONNECTION WITH THE PSTN AND FUNCTIONAL EQUIVALENCE TO TRADITIONAL TELEPHONY

A. IP-enabled services that interconnect with the PSTN should be required to pay access charges

The Commission must not permit any IP-enabled service that interconnects with the PSTN to obtain below-cost[2] or free access (including bill-and-keep) to a rural ILEC's network. This would necessarily impede the ability of rural ILECs to provide consumers with affordable access to a ubiquitous, high-quality telecommunications network. Any

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2004) (NPRM).

[2] Below-cost access would include circumstances where a service provider unilaterally claims that its access to a rural ILEC's network is paid for through reciprocal compensation rates or end-user business

call, whether IP-enabled or not, that utilizes a rural ILEC's network should bear its equitable share of the cost of supporting this network through duly approved access charges.[3] The Commission is entirely correct to assert that:

> … any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. **We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways**.[4]

The structure and rate levels of the access charges paid by IP-enabled service providers should be no different than those paid by traditional interexchange carriers (IXCs). OPASTCO recognizes that the FCC's open proceeding on intercarrier compensation (CC Docket No. 01-92) may change the manner in which rural ILECs recover the costs of other carriers' use of their networks. However, before changes to the existing mix of intercarrier charges, end-user charges, and universal service can be adopted, the *Intercarrier Compensation* proceeding must include a thorough examination of the impacts on high-cost rural ILECs and their customers. Until this process is complete, IP-enabled service providers that interconnect with the PSTN should provide equitable compensation for their use of rural ILECs' networks through duly approved access charges. As the FCC stated in its recent Order denying AT&T's request for its phone-to-phone Internet telephony services to be exempt from access charges:

> The Commission currently is considering access charge reform in its *Intercarrier Compensation* proceeding, and any issues raised by current access rate levels or rate structures will be addressed there, on the basis of a detailed record. Until such time, however, interstate access charges are the charges assessed on interexchange carriers that use local exchange

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rates, neither of which are designed to recover the costs of providing access service.

[3] The exception to this would be reciprocal compensation arrangements established by rural ILECs under section 251(b)(5) of the 1996 Act.

[4] NPRM, paras. 33, 61 (emphasis added).

switching facilities for the provision of interstate telecommunications services.[5]

Thus, the Commission affirmed that, pending the conclusion of the *Intercarrier Compensation* proceeding, access charges are the appropriate mechanism through which ILECs can recover the costs of providing IXCs with access to their local networks. The FCC properly recognized that AT&T's use of IP technology in its network did not entitle it to exceptional treatment.[6] As stated above, the Commission has also correctly maintained that the cost of the PSTN should be borne equitably among those that use it in similar ways. These two determinations, taken together, should lead the FCC to the logical conclusion that, at least until the *Intercarrier Compensation* proceeding is completed, all IP-enabled service providers that utilize a rural ILEC's access services should provide equitable compensation though access charges.

The use of IP technology to transport a call, regardless of whether or not that call may be enhanced by supplemental applications, does not reduce an ILEC's cost of providing access services in any way. The Commission acknowledged this in the AT&T Order, noting that AT&T's phone-to-phone Internet telephony service "utilizes the ILECs' originating and terminating switching facilities in the same manner as its circuit-switched interstate traffic."[7] The mere use of IP technology to transport a voice call, or the voice portion of an enhanced call, must not be turned into an excuse for obtaining access to rural ILECs' networks for free or at below-cost rates. As the Commission stated: "IP technology should be deployed based on its potential to create new services

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[5] *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (rel. Apr. 21, 2004), para. 18 (citation omitted) (AT&T Order).

[6] *Ibid.*, para. 17.

and network efficiencies, not solely as a means to avoid paying access charges."[8]

If all providers that utilize rural ILECs' networks do not pay for access in a similar manner, regulatory arbitrage will occur. The Commission is rightly concerned that such arbitrage would provide artificial incentives to utilize a specific technology.[9] More importantly, it would prevent rural ILECs from recovering the costs of providing access to their networks. Without adequate recovery of the costs incurred from originating, terminating, and transporting traffic over their networks, the ability of rural ILECs to continue providing basic services, much less IP-enabled services, at affordable rates would be seriously compromised.

Lack of adequate cost recovery through duly approved access charges would also inhibit rural ILECs from investing in the network upgrades necessary to provide broadband to greater numbers of rural customers. This is contrary to the goals of section 706 of the 1996 Act, which seeks to encourage the deployment of advanced services in all areas of the nation. Furthermore, since broadband is generally necessary to carry IP-enabled services, inadequate cost recovery would have the ironic effect of preventing some IP-enabled service providers from making their services available to consumers in high-cost areas.

Rural consumers should have access to IP-enabled services that are comparable in quality and price to those provided in urban areas, as called for by section 254 of the

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[7] *Id.*, para. 18.

[8] *Id.*

[9] *See Id.*, para. 17: "[W]e see no benefit in promoting one party's use of a specific technology to engage in arbitrage at the cost of what other parties are entitled to under the statute and our rules…". *See also*, *Id.*, Statement of Chairman Michael K. Powell: "To allow a carrier to avoid regulatory obligations simply by dropping a little IP in the network would merely sanction regulatory arbitrage and would collapse the universal service system virtually overnight."

1996 Act.[10] If rural ILECs are to maintain a modern infrastructure capable of delivering these and other services at affordable rates, they cannot supply access to their local networks to other service providers for free or for less than their own costs. Therefore, the Commission should affirm that, pending a ruling in the *Intercarrier Compensation* proceeding that alters the current access charge regime, IP-enabled service providers that interconnect with a rural ILEC's local network should provide adequate compensation through duly approved access charges. Furthermore, any successor intercarrier compensation regime must treat all service providers that send traffic to local networks in an equitable manner with regard to compensation obligations, regardless of the technologies that they employ.

B. IP-enabled services that are functionally equivalent to traditional telephony should be subject to similar service obligations

In its 1998 Report to Congress on Universal Service, the Commission correctly stated that "the classification of a service under the 1996 Act depends on the functional nature of the end-user offering."[11] Similarly, Chairman Powell has declared that:

> [S]ound regulatory policy should, where appropriate, harmonize regulatory rights and obligations that are attached to the provision of similarly-situated services across different technological platform[s].[12]

While IP-enabled services should not be subject to disproportionate or unnecessary burdens, neither should end-users find themselves lacking access to important features that they have come to expect from all providers of telephone

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[10] 47 U.S.C. § 254(b).

[11] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd, 11501, 11543 (1998), para. 86 (1998 Report).

[12] Remarks of Michael K. Powell, Chairman, Federal Communications Commission, at the Broadband Technology Summit, US Chamber of Commerce, Washington, D.C. (April 30, 2002), <http://www.fcc.gov/Speeches/Powell/2002/spmkp205.html>. *See also*, AT&T Order, Statement of Chairman Michael K. Powell: "… it is important to be guided by the perspective of consumers that are

service.[13] For instance, consumers have a right to expect E911 functionality from all service providers that offer functional equivalence to traditional telephony, regardless of whether or not the service is IP-enabled, and regardless of whether the service may offer other types of enhanced features. Similarly, the use of different technological platforms should not deny consumers with disabilities the same choices among service providers as others.

Moreover, a competitive disparity will result if one set of carriers are held to public safety and disability access standards, but other service providers offering functionally equivalent services over different technological platforms are not. Not only would this present another arbitrage opportunity, it would also make it more difficult for service providers with these obligations to fulfill their responsibilities as they lose customers to competitors that do not have the same public service requirements. It is not justifiable to risk public safety and limit choice for the disabled in order to provide a competitive advantage to a subset of providers that offer service that is functionally equivalent to traditional telephony, based on their use of a particular technology.

III. RURAL ILECS MUST RETAIN THE OPTION TO INCLUDE DSL IN REVENUE POOLS, REGARDLESS OF HOW IT IS STATUTORILY CLASSIFIED

In the event that changes in the legal classification of wireline broadband Internet access lead to the phase-out or elimination of tariffing for DSL-based services, some type of effective pooling mechanism must remain available.[14] For many rural ILECs, the

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purchasing service, in determining how a service should be understood."

[13] NPRM, paras. 50-60.

[14] *See*, OPASTCO reply comments, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, FCC 01-360 (fil. April 22, 2002), pp. 2-5. *See also*, OPASTCO comments, *Appropriate Framework for Broadband Access*

provision of advanced services at affordable rates would not be viable without participation in the revenue pools administered by the National Exchange Carrier Association (NECA). Pooling enables these carriers to offer DSL-based services to consumers under tariffed rates that are based upon pool-wide averaged costs. Pool participants remit the revenues generated from their DSL-based services to the pool, and are able to recover their actual costs. Thus, the provision of advanced services at affordable rates in many high-cost rural areas would simply not be possible without pooling. However, if a change in the legal classification of DSL led to a prohibition on tariffing, without careful planning and foresight by the Commission, many rural ILECs could find themselves without any pooling mechanism for their broadband Internet access service.

Investment in DSL-capable infrastructure is risky for rural carriers because of low population density[15] and other factors that make service more costly to provision in these markets. Many rural ILECs deployed DSL technology with no reason to believe that pooling might be discontinued in the foreseeable future. Pooling remains necessary in order for them to recover the considerable costs of deployment and continue providing the service.

A sudden elimination of DSL from the NECA pools could require significant rate increases, which might force some customers of rural ILECs to stop subscribing to DSL-based services that they currently enjoy. It could also leave these carriers with significant

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to the Internet over Wireline Facilities, *et. al.*, CC Docket No. 02-33, Notice of Proposed Rulemaking, FCC 02-42 (fil. May 3, 2002), pp. 3-5 (OPASTCO wireline broadband comments).

[15] *See*, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Third Report, FCC 02-33 (rel. Feb. 6, 2002), para. 35: "[H]igh population density has a strong positive correlation with the presence of

stranded investment and financial losses. Further, pooling carriers would find it far more difficult, and in many cases impossible, to expand DSL-based services to consumers who are located further from the central office. Obviously, these outcomes would be antithetical to the Commission's goal of encouraging the ubiquitous availability of advanced services to all Americans.[16] Therefore, no matter how the Commission ultimately decides to statutorily classify wireline broadband Internet access, it is imperative that rural ILECs retain a pooling option for their DSL-based services.

IV. THE BASE OF UNIVERSAL SERVICE FUND CONTRIBUTORS SHOULD BE EXPANDED TO INCLUDE ALL FACILITIES-BASED BROADBAND INTERNET ACCESS PROVIDERS

The Commission seeks comment on how the regulatory classification of IP-enabled services would effect its ability to fund universal service. The NPRM acknowledges that many of these issues have already been raised in the *Wireline Broadband* proceeding.[17] As OPASTCO stated in its comments in that proceeding, the FCC should require all facilities-based broadband Internet access providers to contribute to the Universal Service Fund (USF).[18] The Commission should do this expeditiously, irrespective of any decisions it may make regarding the statutory classification of IP-enabled services and/or broadband Internet access services.[19] The Commission has

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high-speed subscribership and low population density has a strong negative correlation."

[16] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*; *Universal Service Obligations of Broadband Providers*; *Computer III Further Remand Proceedings*: *Bell Operating Company Provision of Enhanced Services*; *1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, *CC Docket No. 02-33*, CC Docket Nos. 95-20, 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019, 3021 (2002), para. 3: "*First*, it is the Commission's primary policy goal to encourage the ubiquitous availability of broadband to all Americans" (emphasis in the original).

[17] NPRM, para. 63.

[18] OPASTCO wireline broadband comments, pp. 11-19.

[19] Indeed, it appears that the Commission has delayed addressing the statutory classification of wireline broadband Internet access services due to the court decision regarding its classification of cable modem

already determined that it has the permissive authority under section 254(d) of the 1996 Act to require any facilities-based broadband Internet access provider to contribute to the USF.[20] Under this provision, the Commission may determine that "any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires." Particularly in light of the rapid growth of IP-enabled services, including VoIP, it is most definitely in the public interest that all broadband Internet access providers over all platforms be required to contribute without delay.

In section 254 of the 1996 Act, Congress called for specific, predictable, and *sufficient* mechanisms to preserve and advance universal service.[21] As the marketplace evolves toward broadband platforms and IP networks, the shift away from more traditional telecommunications services will continue to "drain" the support base for universal service, threatening its sufficiency. This impact is even more pronounced when providers offer voice services over broadband platforms that are the functional equivalent of traditional telephony, but the underlying broadband access provider is not required to contribute to universal service. Consequently, the inclusion of all facilities-based broadband Internet access providers as contributors to the USF becomes increasingly critical to maintaining a stable and sufficient USF, as Congress directed.

The Commission has previously recognized that overall end-user switched interstate telecommunications revenues, which the contribution base presently relies

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service (345 F.3d 1120 9th Cir. 2003). However, there is no need to continue delaying a decision to require all broadband Internet access providers to contribute to universal service under the FCC's permissive authority, as this issue is separate and distinct from the issue regarding the legal classification of these services.

[20] 1998 Report, FCC Rcd 11534-11535, 11570, paras. 69, 139.

upon, are now on the decline.[22] Nevertheless, while the contribution base may be shrinking, overall demand for interstate telecommunications and information services has probably never been greater. The demand is simply shifting to service packages and service providers in which either the precise portion of revenues attributable to interstate telecommunications cannot easily be identified (e.g., wireless carriers) or the service provider is not currently required to contribute to universal service.

The accelerating use of broadband platforms and IP networks may offer certain benefits, but it also plays a significant role in the present instability of the contribution base. As more and more voice traffic migrates to IP-enabled services – which is transported, in part, via broadband platforms that do not presently contribute to the USF – the long-term viability of the Fund is threatened.[23]

There are valid concerns that the rapid evolution of IP-enabled services might drain substantial amounts of support for the local network providers in high-cost areas that enable rural consumers to enjoy these types of services.[24] Extending universal service assessments to all facilities-based broadband Internet access providers would greatly alleviate this danger. Doing so would help keep the USF sustainable for the long term, even as increasing amounts of voice traffic migrate away from traditional telecommunications carriers. This, in turn, would help to ensure that consumers in rural

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[21] 47 U.S.C. §254(b)(5) (emphasis added).

[22] *Federal-State Joint Board on Universal Service, et. al.,* CC Docket No. 96-45, *et. al.*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 3752, 3756, para. 8 (2002).

[23] *See*, *Federal and State Universal Service Programs and Challenges to Funding,* Report to the Ranking Minority Member, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, General Accounting Office (rel. February 2002), p. 21-22 (GAO Report): "As the deployment of IP telephony technologies move forward, and more businesses and consumers begin to substitute IP telephony for traditional telephone service, the question arises as to whether a decline in the funding for universal service could result."

and high-cost areas continue to have affordable access to telecommunications and information services, including advanced services, that are comparable to those offered in urban areas.[25] Furthermore, when some service providers are not required to contribute to universal service, the obligation upon those who are required to contribute is obviously greater. Spreading support obligations as widely as possible reduces each company's contribution, which, in turn, reduces the level of universal service assessments that each carrier must ultimately pass on to their customers.

Moreover, the Commission's own universal service principle of competitive neutrality[26] requires that facilities-based broadband Internet access providers over all platforms contribute to universal service. Currently, only wireline telecommunications carriers are required to contribute on revenues earned from their DSL-based broadband transmission service. Cable modem, satellite, and other broadband platforms are not presently required to contribute. This disparate treatment of competing broadband Internet access providers vis-à-vis their universal service obligations has created opportunities for regulatory arbitrage. Broadband Internet access providers that are exempt from contributing to universal service have a competitive advantage over those who are required to contribute, as they do not need to recover any support payments from their end users.[27]

Regulations should not drive consumers to favor one type of provider or platform

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[24] *See*, AT&T Order, Statement of Commissioner Jonathan S. Adelstein.

[25] 47 U.S.C. §254(b)(3).

[26] S*ee*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, para. 47 (1997).

[27] *See*, GAO Report, p. 22, fn. 31: "IP telephony calls, which do not include universal service charges [which, for large companies average between 8 to 12 percent of the total telephone bill] can mean a savings of around 10 percent on corporate telephone bills. This savings … may make IP networks attractive to

over another. Rather, end users should select a provider based on its services, quality, and rates. Thus, by expeditiously requiring facilities-based broadband Internet access providers over all platforms to contribute, the Commission would eliminate the growing inequity and potential for marketplace distortions that arise under the current rules.

V. IF THE COMMISSION ASSERTS FEDERAL JURISDICTION OVER IP-ENABLED SERVICES, IT MUST ENSURE THAT THE PROCESS IS REVENUE-NEUTRAL FOR ALL RURAL ILECS IN ALL STATES, WITHOUT PREJUDICE TO A STATE'S RATE REBALANCING EFFORTS

OPASTCO appreciates the Commission's specific recognition of the unique challenges facing rural carriers. The Commission correctly notes that rural ILECs derive a significant portion of their revenues from access charges, and asks how its assertion of federal jurisdiction over IP-enabled services might affect the level of intrastate access revenues that rural ILECs receive.[28]

States are far from uniform in how they allow rural ILECs to recover their intrastate access costs. Many have engaged in rate rebalancing to various degrees, while other states have not rebalanced at all. This results in a wide range of local end-user rates and intrastate access rates among rural ILECs in different states. Some states have relatively low local end-user rates, but with intrastate access rates that make up the difference in the ILECs' intrastate costs. Other states have significantly lowered intrastate access rates, but have offset these reductions through much higher local end-user rates.

Therefore, in the event that the FCC asserts federal jurisdiction over IP-enabled services, it must ensure that the process is revenue-neutral for all rural ILECs in all states,

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large business end users."

without prejudice to a state's rebalancing efforts. Before rural ILECs will make investments in their network, they need reasonable assurances that they will be permitted to recover the costs of those investments. No rural ILEC should be denied full recovery of its costs on account of a state commission's end-user and intrastate access rate policies – decisions over which rural ILECs have little, if any, control.

Moreover, the Commission must allow for full cost recovery in a manner that does not threaten the stability and sustainability of existing high-cost support mechanisms. Congress has directed that end-user rates remain affordable and that there is reasonable comparability between rural and urban rates and services.[29] However, both policymakers and service providers share concerns regarding the impact that substantial growth of the existing High-Cost Program would have on its sustainability. Therefore, should the Commission assert jurisdiction over IP-enabled services, it must carefully analyze the potential ramifications such an action might have for end-user rates, and ensure that a sufficient support mechanism is in place that would fulfill Congress' universal service objectives. As discussed in section IV, *supra*, one step the FCC can take to that end is to expand the base of USF contributors to include all facilities-based broadband Internet access providers.

VI. CONCLUSION

IP-enabled services have the potential to deliver innovative features to rural consumers. However, if such services are granted free or below-cost access to rural ILECs' infrastructure, the very networks that bring these services to consumers will be compromised. Therefore, the Commission should clearly state that access charges apply

[28] NPRM, para. 75.

to all IP-enabled services that utilize the networks of rural ILECs, at least until the completion of the *Intercarrier Compensation* proceeding. Furthermore, IP-enabled services that are functionally equivalent to traditional telephony should be subject to the same E911, disability access, and other similar requirements that telecommunications carriers currently fulfill.

Regardless of the classification of DSL-based services, rural ILECs must retain the option to include these services in revenue pools. Many rural ILECs find such pools necessary to provide advanced services at affordable rates. In addition, it is imperative that all facilities-based broadband Internet access providers be required to contribute to the USF in order to keep the Fund sufficient as directed by Congress. Finally, any assertion of federal jurisdiction over IP-enabled services must include assurances that the result will be revenue-neutral for all rural ILECs in all states, regardless of the extent to which a state may have rebalanced end-user and intrastate access rates.

Respectfully submitted,

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[29] 47 U.S.C. 254(b)(1), (3).

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Certificate of Service

I, Jeffrey W. Smith, hereby certify that copies of OPASTCO's comments were sent on this, the 28th day of May, 2004 by first class United States mail, postage prepaid, or via electronic mail, to those listed below.

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WC Docket No. 04-36
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